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TAGS: [PGOV](#) [ECON](#) [KDEM](#) [PREL](#) [PHUM](#) [PINR](#) [ENVR](#) [BL](#)  
SUBJECT: BOLIVIA: MAS CONTINUES PURGE OF JUDICIARY

REF: A. 07 LA PAZ 688  
[1](#)B. 07 LA PAZ 3258  
[1](#)C. 07 LA PAZ 1467

Classified By: EcoPol Chief Mike Hammer for reasons 1.4 (b)  
and (d)

[1](#)1. (C) Summary: Bolivian President Evo Morales and his ruling Movement Toward Socialism (MAS) party are moving aggressively once again to bring to heel dissident members of the country's judiciary, including the Supreme Court, and to install new justices more amenable to the MAS vision. Recent comments by Bolivian Vice-President Garcia Linera that "most members" of the judiciary in Bolivia are corrupt have raised opposition fears of a movement against the Supreme Court reminiscent of the 2007 dismantling of the Constitutional Tribunal. The MAS plans to elect at least twelve new members of the judiciary to fill current vacancies, including nine members of the Constitutional Tribunal, a Supreme Court justice, and two members of the National Electoral Court. The Morales administration's antipathy toward the Supreme Court has been stoked by rulings that attempted to end the ongoing detention of ex-Pando Prefect (governor) Leopoldo Fernandez in a La Paz prison, and transfer him instead to Sucre for impeachment hearings. Government Minister Alfredo Rada defied the court order and, in a counter-attack, brought charges against two Supreme Court justices for "attempting to aid a fugitive." The MAS has similarly pressured the country's Attorney General, Mario Uribe, to stop supporting the Supreme Court's decision. Uribe now appears to have abdicated his role as prosecutor, giving power to the Congress (read: the MAS) to conduct the investigation. The Vice-President has further upped the ante, calling for "reform and transformation" of the judiciary and asserting that any failure by members of the judiciary to toe the MAS party line is "proof of their corruption." An opposition contact tells us that Morales and the MAS are determined to get their way, first by asking nicely, then by discreetly threatening family members, and finally by planting accusations in the press and/or opening public investigations. This recipe follows exactly the pattern used in 2007 to dislodge opposition members of the Constitutional Tribunal. End summary.

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2007: MAS destroys the Constitutional Tribunal

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¶2. (SBU) The Bolivian judiciary is comprised of three main elements: the Constitutional Tribunal, the Supreme Court, and the National Electoral Court. (A fourth group, the Judicial Council, acts as an oversight body.) The Constitutional Tribunal is Bolivia's highest court on constitutional matters, and the Supreme Court is the highest court of appeals for all other matters. The National Electoral Court rules on all matters related to elections.

¶3. (C) In 2007, President Morales and his ruling MAS party effectively dismantled the Constitutional Tribunal, which has not recovered since then. In 2008, it appears they may be ready to follow a similar path against the Supreme Court. Of the three judicial institutions, the Constitutional Tribunal is considered the most fragile because, according to a former Tribunal magistrate, it serves as "the brake on excessive power in the Executive branch." (Reftel A) By early 2007, President Morales and the ruling MAS party had become hostile toward the Tribunal, which they saw as opposing their change agenda. In response, the MAS developed a multi-pronged strategy to shut it down: the Tribunal members' salaries were cut in half; Morales accused them of being corrupt and protecting narco-traffickers (without presenting proof of either); the MAS allegedly had the members pressured with threatening phone calls; Morales encouraged a protest by MAS supporters (where marchers exploded dynamite at the door of the Tribunal building, destroying its facade and badly injuring a police officer); and in May 2007 the Congress opened impeachment proceedings against four magistrates. (Reftel B) Although the impeachment proceedings failed, the overall strategy worked. By the end of 2007, following a series of resignations (many coerced), the Tribunal was reduced from ten members (including five alternates) to one, rendering it unable to reach a quorum of three and effectively defunct. The Tribunal now has a three-year backlog of cases (and growing), according to a recent report in leading daily La Razon. More importantly, it is unable to rule directly on the constitutionality of measures taken by the Morales administration.

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Pando Ruling Re-Triggers MAS' Ire Toward Supreme Court

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¶4. (SBU) Morales' antipathy toward the Supreme Court is also not new. In April 2006, he argued that "certain sacred cows of the judiciary" do not wish to "go along with the government's policies of change." In October 2006, he called the Supreme court a "relic of the colonial state." At the opening of the 2007 judicial year, Morales denounced the entire system as corrupt and "smelling of dollars." As they did with the Constitutional Tribunal, the Morales' administration publicly pressured the justices, urging them to change their recalcitrant ways and follow the MAS program of change. Morales cut the justices' salaries in half. (Note: While the Bolivian government cut the salaries of all government employees, Constitutional Tribunal magistrates and Supreme Court justices felt the cuts were being done to pressure them to resign. End note.) On May 21, 2007, Supreme Court magistrate Juan Gonzales Ossio resigned, citing pressure and "the constant questioning of the judiciary." On December 5, 2007, the Congress passed impeachment charges against another of the justices, which failed but kept the magistrate, Rosario Canedo, suspended until the Senate acted to reinstate her on April 10.

¶5. (SBU) Since the attempted impeachment of Canedo, the political storms surrounding the Supreme Court had abated somewhat. However, a series of recent Supreme Court rulings regarding the imprisonment of ex-Pando Prefect (Governor) Leopoldo Fernandez has started another round of pressure tactics from the MAS. As part of the state of siege declared in Pando, the Bolivian government confined Fernandez in a La Paz jail and opened criminal proceedings against him for allegedly directing the September 11 killings in Pando. At roughly the same time, the prosecutor's office in Sucre,

headed by Attorney General Mario Uribe, opened a separate impeachment case against Fernandez for abuse of his powers as a Prefect. The Supreme Court reviewed the two cases and decided that as a Prefect, Fernandez could not be legally tried in normal criminal proceedings in La Paz, but should instead be moved to Sucre, the judicial capital of Bolivia, for impeachment hearings. The Judicial Council, acting in its oversight capacity, reprimanded the La Paz judge that accepted the criminal case against Fernandez, stating that the judge should have known the case would require impeachment hearings and that La Paz would not be the correct jurisdiction.

¶6. (SBU) However, MAS Government Minister Alfredo Rada publicly disagreed with the decision to move Fernandez. He criticized the judgments and refused to release Fernandez from the La Paz prison, where MAS-affiliated social groups were keeping a round-the-clock vigil. In response, the Supreme Court affirmed its stance, and gave a second deadline to move Fernandez to Sucre for impeachment proceedings, which was also ignored. On November 5, Vice-Minister Wilfredo Chavez, in conjunction with Rada and Defense Minister Walker San Miguel, opened a complaint and investigation against Supreme Court Justices Jose Luis Baptista and Angel Irusta for "aiding a fugitive" from the law when they "had no competency in the case." At the same time, the government publicly denounced the head of the Judicial Council for criticizing the La Paz judge who accepted the criminal case against Fernandez. Then, after repeatedly and publicly stating his support for the Court's verdict to move the case to Sucre, Attorney General Uribe released a letter correcting himself and stating his new belief that the MAS-controlled Congressional commission should investigate Fernandez' crimes, not the prosecutor's office. Uribe's reversal came after a the same commission opened proceedings against him to investigate his potential "undue influence" in the Fernandez case. PODEMOS Senator Luis Vasquez called the MAS' use of Congressional investigations into Uribe and seven other members of the judiciary "a coup d'etat against the judicial branch."

¶7. (SBU) On November 10, Vice-President Garcia Linera took his turn in denouncing the judiciary, stating that "a majority of the members of the judicial system" are corrupt and calling for its "reform and transformation." Garcia went on to say that the desire of judges to defend the court was proof of their "corruption and chicanery." He added that, "the Government has a clear role in defending the 'State of the Law,' its judgment." In a response reported by leading daily La Razon, Supreme Court Chief Justice Eddy Fernandez called the Vice-President's comments an indication of the government's intent "to behead the leadership of the judicial branch in the same way they did with the Constitutional Tribunal." Fernandez remarked that there is always conflict between government powers, and requested that the executive branch respect the independence of the others.

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Stacking the Courts with MASistas  
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¶8. (C) At the same time as they are pressuring the existing members of the judiciary, the Morales government is preparing to fill vacancies in all three wings of the judiciary. The MAS plans to elect at least twelve new members, including nine members of the Constitutional Tribunal, a Supreme Court justice, and two members of the five-member National Electoral Court. Past Tribunal and Supreme Court appointments have been blocked by the Senate, which the opposition controls. However, the MAS may feel the opposition's current state of disarray, plus the recent compromise on the text of the draft Constitution (which a majority of the opposition ultimately supported), will give it the strength it needs to push through new nominations. There is also debate as to whether the new vacancies would be filled for their full terms (up to ten years in the case of the Constitutional Tribunal and the Supreme Court) or for just two years until the new Constitution is projected to

take effect. The MAS has come out in support of interim appointments, while PODEMOS leadership is divided. Senator Carlos Boerth supports a transition period, while Senator Luis Vasquez has insisted that any new appointments follow the current Constitution, as it is the only one in effect and does not allow for interim appointments.

¶9. (C) The Electoral Court, in addition to missing two members, is faced with the pending expiration of Court Vice-President Jeronimo Pinheiro's term in office, which ends in December. Without Pinheiro or the appointment of two new Court members, the Electoral Court would be unable to certify the legitimacy of the January 25 constitutional referendum. The MAS introduced legislation on November 18 to extend the tenure of both Pinheiro and Court member Amalia Oporto through January 2010. Vice-President Garcia Linera has taken a harder line, promising to convoke the Congress immediately to fill all pending vacancies across the judiciary. (Note: While the Senate has in the past blocked appointments, Garcia Linera's aggressive stance likely signals a willingness to use whatever tools are necessary to work a deal, from the usual political "carrots" to "sticks" that could include surrounding the Congress with MAS-affiliated protestors. End note.) PODEMOS Senator Vasquez reacted strongly against the proposed extension of tenure, saying the MAS was acting unconstitutionally by working to get around the Congress' duty to elect Court members. Once passed in the lower house, the legislation would go to the Senate, where it would have to be acted on within 15 days or go to a vote of the full Congress (where it would require only a simple majority to pass).

¶10. (C) PODEMOS legal adviser Carlos Goitea, who was in talks leading to both the Oruro version of the proposed Constitution and the newer compromise version announced October 22, told PolOff the MAS is determined to get its way, first by asking nicely, then by discreetly threatening family members, and finally by planting accusations in the press and/or opening public investigations. "If they cannot get you to kneel, they will force you out," he said. This recipe follows exactly the pattern used in 2007 to derail the Constitutional Tribunal, and appears to jibe with the current public investigations of the two Supreme Court justices and Attorney General Uribe.

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Comment  
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¶11. (C) It appears that from a MAS point of view, the only thing better than a defunct judiciary (i.e. the Constitutional Tribunal) is a compliant judiciary. To that end, the MAS is attempting to reconstitute the Tribunal with a large majority of MAS supporters and pressure the Supreme Court and the Attorney General to toe the MAS party line. Furthermore, the statements by the Vice-President and government ministers reflect a kind of revolutionary "group-think." Any judgments that do not agree with revolutionary thinking are either ignored (i.e. Rada's dismissal of two Supreme Court deadlines to transfer Fernandez) or actively dismissed as belonging to a "corrupt past" (i.e. Garcia Linera's comments about the Supreme Court justices). The imprisonment of ex-Prefect Fernandez is the first time in Bolivian history a Prefect has been held in a jail without formal charges, and his incarceration continues despite clear legal guidelines to the contrary. These actions show how ready the MAS leadership is to act according to their own internal vision of what the law "should be," instead of hewing to democratically-approved laws that might otherwise interfere with their actions. Our contacts are also speaking of more pressure on the National Electoral Court, particularly on Court President Jose Luis Exeni, to support the MAS in the upcoming review of the voter rolls. The message seems clear: in today's Bolivia, the law is subordinate to the revolution, and not the other way around.

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